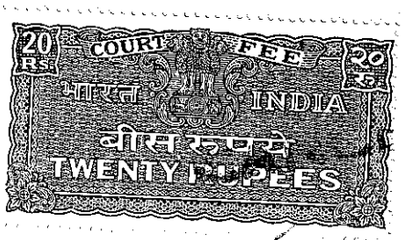

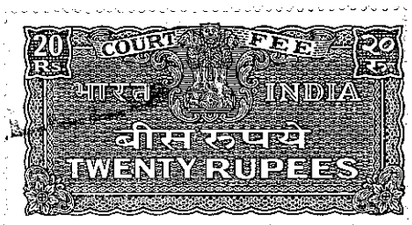


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IN THE HIGH COURT OF JUDICATURE AT JABALPUR

W.P. NO. 5693 /2000

Petitioner :- Jaichandi FishermenGroup through President Hiralal Dheemar Village & Post Kosrangi P.S. Kharora Tahsil Aarang District Raipur (M.P.)

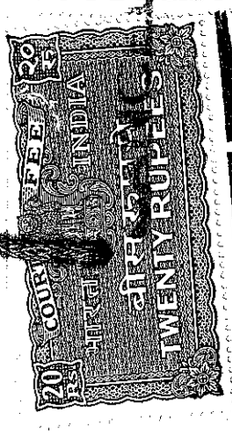
Versus

Respondents :- 1. State of M.P. through Secretary State of M.P. ( Panchayat & Gramin Vikas Vibhag) Bhopal (M.P.)

2. Commissioner Raipur (M.P.)

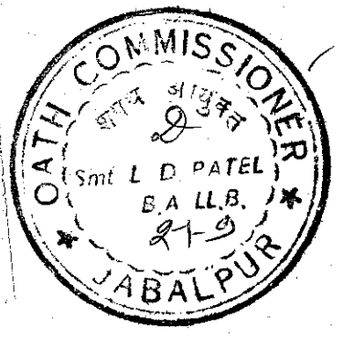
3. Upper Collector Raipur (M.P.)

4. Janpad Panchayat Aarang through C.E.O. Block Aarang District Raipur (M.P.)




5. Assistant Director of Fisheries Raipur (M.P.)

6. D.P.J. (displaced person) fishermen Co-operative Society through the President Village Kosarangi Post Kosarangi Tahsil Aarang District Raipur (M.P.)




WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF CHHATTISGARH, BILASPUR

(SINGLE BENCH: HON'BLE THE CHIEF JUSTICE W.A.SHISHAK)

WRIT PETITION NO. 5673/2000

Jaichandi Fishermen Group

Vs

State of M.P(now Chhattisgarh)& Ors.

- - -

Shri B.N. Pandey, learned counsel for petitioners.

Dr. N.K. Shukla, learned Dy.A.G. for respondents nos. 1 to 5.

Shri Manoj Paranjpe, learned counsel for respondent no.6.

They are heard.

-oOo-

O R D E R

(Passed on 19th Feb. 2001)

After hearing counsel for the parties at some length, I am of the view that in the best interest of justice the matter shall be finally disposed of now.

2) Brief facts may be stated. Fish ponds/tanks are owned by the State. However, powers are delegated to certain authorities for the purpose of leasing out the fish tanks. Gram Panchayat is authorised for the purpose of carrying out the lease agreement if the fish tank is below 10 hectares. Any tank above or more than 10 hectares but less than 100 hectares lease agreement is to be handled by the Janpad Panchayat. The present case relates to the second category of the authority and ~~namely~~ the lease agreement entered into between the writ petitioner and the respondent no.4 - Janpad Panchayat which is at issue.

3) The policy of the State Government in the matter of leasing out tanks is as follows:

The first preference is to go in favour of

Fishermen Co-operative Society. Secondly, it would go in favour of the registered Society of Scheduled Caste Community and thirdly the registered Society of Scheduled Tribe Community. In the second category, preferences are, firstly to the Fishermen Community, secondly the Scheduled Casste Community and thirdly the Scheduled Tribe Community. Such groups or communities need not be the registered communities. The last category is of individuals of Fishermen Community, Scheduled Caste Community & Scheduled Tribe Community.

4) It may also be stated at this stage that respondent no.6 is a duly registered society of Fishermen. It may also be stated at the same time that the petitioners are a group of fishermen, but not a registered society.

5) To make the story short, it may be stated that lease was granted in favour of the petitioner and in this regard lease agreement was duly entered into between the writ petitioner and respondent no.4 on 17/12/1997. Respondent no.6 was aggrieved by the said action of respondent no.4. Hence, respondent no.6 approached the Additional Collector on 17/12/1998. The Additional Collector was of the view that the respondent no.6 was entitled to get preference in the matter of leasing out the fish tank in question. However, as documents required by the Additional Collector were not made available at the time of hearing, the claim of respondent no.6 was rejected. Being aggrieved by the order of Additional Collector, respondent no.6 approached the Commissioner. After hearing the parties, the Commissioner allowed the

appeal by order dated 10/6/1999. The petitioner was aggrieved by the order of Commissioner and hence approached M.P. High Court at Janalpur, vide Writ Petition No.2903/1999. The said petition was disposed of on 16/12/1999. It was held that since the order passed by the Commissioner is revisable under the M.P. Panchayat (Appeals and Revisions) Rules, 1995, the party should approach within 4 weeks from that day before the State Government. The revision was duly filed before the State Authority. Parties were heard on 12/7/2000. It is stated at the Bar by Dr. N.K. Shukla today that though hearing was practically completed on 12/7/2000, 20 days were allowed to the counsel representing the petitioner to prove allegation that respondent no.6 was a fake society. On failure to do so after 20 days, final order was passed by the Revisional Authority, the concerned Minister on 15/9/2000 by which the order passed by the Commissioner on 10/6/1999 was upheld.

5) Unfortunately, the present litigation has been going on for the last more than three years. In the few facts and circumstances and I have stated above and upon hearing counsel of the parties, there is no scope for this Court to interfere with the final order passed by the Commissioner which was affirmed by the Minister as aforesaid. While saying so, a peculiar situation has also to be dealt with in the interest of justice. The petitioner cannot be faulted for entering into a lease agreement with the respondent no.4 inasmuch as an order in this regard was issued by the Competent Authority i.e., the respondent no.4. The said lease

agreement, therefore, must be held to be in existence until it came to be set aside by the Commissioner on 10/6/1999. If that be so, I have no reason to doubt that the petitioner had to put fish-fingers in the tank. Therefore, in such a situation though the petitioner has lost legal battle the fact that the fishes in the tank are his inasmuch as if he had to put fish-fingers between December, 1997 & June, 1999, he had not committed any wrong in doing so inasmuch as the lease agreement till then was in favour of the petitioner. If there was no litigation the lease agreement would have remained valid till 30/6/2001 and the petitioner would have been entitled to operate fully for the period from the date of agreement till 30/6/2001. However, because of the litigation the petitioner and also respondent no.6 have suffered. In order to resolve the issue of collecting fishes from the tank, I direct that the petitioner be allowed to fish and this operation shall be completed latest by 30/6/2001. This shall be subject to payment of annual rent as contemplated in the lease agreement initially entered into between the petitioner and respondent no.4 on 17/12/1997 to be effective from 21/1/1998. Further, in order to make complete justice I would also direct that the lease agreement to be entered into between the respondent no.6 and respondent no.4 be made effective from 1/7/2001 for a period of seven years. It may be said that the terms and conditions shall be the same.

6) With these observations and directions, the petition is disposed of.

Sd/-
Chief Justice